

**REMARKS**

This Application has been carefully reviewed in light of the Office Action mailed December 26, 2006. In the Office Action Claims 1-39 are pending. The Examiner rejects Claims 1-13, 15-21, and 23-39; and objects to Claims 14 and 22. Claims 1, 11, 16, and 32 have been amended. Applicants submit that no new matter has been added by these amendments. Applicants respectfully request reconsideration and favorable action in this case.

**Allowable Subject Matter**

Applicants note with appreciation the Examiner's indication that Claims 14 and 22 would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. However, as discussed below, Applicants believe that independent Claim 11 (from which Claim 14 depends) and independent Claim 16 (from which Claim 22 depends ) are also allowable. Therefore, Applicants have not amended Claims 14 and 22.

**Section 103 Rejections**

The Examiner rejects Claims 1-13, 15-21, and 23-39 under 35 U.S.C. § 103(a) as being unpatentable over various combinations of U.S. Patent Application Publication No. 2003/0061319 issued to Manzardo ("*Manzardo*"), U.S. Patent No. 7,085,805 issued to Ruberg et al. ("*Ruberg*"), U.S. Patent No. 6,853,714 issued to Liljestrand et al. ("*Liljestrand*"), U.S. Patent No. 6,785,223 issued to Korpi et al. ("*Korpi*"), and U.S. Patent No. 7,023,876 issued to Berry et al. ("*Berry*").

**A. The Claims are Allowable over the cited References**

Because the proposed combinations do not disclose, teach, or suggest each and every feature of Applicants' claims, Applicants respectfully traverse the rejection of the claims and request reconsideration and favorable action.

**1. Claims 1-2, 4, 6-7, 21, 23, 26, 28-29, 31-33, 35-37, and 39**

Independent Claim 1, which has been rejected over the *Manzardo-Ruberg* combination, recites:

A method for recovering a communication session after failure of an endpoint, comprising:  
establishing a communication session between a first user endpoint and a second user endpoint;  
receiving keep alive signals from the first user endpoint;  
detecting an interruption in the keep alive signals;  
maintaining a connection with the second user endpoint after the interruption; and  
reestablishing the communication session between the first user endpoint and the second user endpoint if the keep alive signals resume within a predetermined time period.

Whether considered alone or in combination, neither *Manzardo* nor *Ruberg* disclose, either expressly or inherently, each and every element of independent Claim 1.

For example, Applicants respectfully submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest “maintaining a connection with the second user endpoint after the interruption,” as recited in Claim 1. In the previous Office Action mailed on July 11, 2006, the Examiner acknowledged that the recited features and operations were absent from *Manzardo*.<sup>1</sup> However, in the most recent Office Action, the Examiner takes the opposite position and relies upon *Manzardo* for the recited claim elements. Applicants respectfully submit that the Examiner’s prior conclusion that *Manzardo* does not disclose, teach, or suggest “maintaining a connection with the second user endpoint after the interruption,” as recited in Claim 1, was the correct conclusion.

The Examiner cites paragraph 49 of *Manzardo*. (Office Action, page 3). The cited portion of *Manzardo* discloses:

In some embodiments, the main server 102 may initiate or provide a keep alive signal at certain intervals or certain times. Thus, the stand-by server 104 may not initiate switch over from the main server 102 or support for calls handled by the main server 102 unless the stand-by server 104 fails to receive one or more of the keep alive signals or detects that one or more of the keep alive signals.

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<sup>1</sup> The Examiner instead relied upon U.S. Patent No. 6,912,276 issued to Olafsson et al. (“*Olafsson*”) for disclosure of these particular claim elements.

(*Manzardo*, Paragraph 49). Thus, the portion of *Manzardo* cited by the Examiner merely discusses the use of keep alive signals to determine the functionality of a server. If one reads further, *Manzardo* discloses:

During a step 206, the main server 102 stops initiating or sending keep alive signals . . . During a step 208, the stand-by server 104 detects a lack or loss of one or more keep alive signals initiated by the main server 102 . . . In some embodiments, the method 100 may include a step during which the gateway 120 and/or the interface 117, or some other client connection device, detects a lack of a keep alive signal sent or initiated by the main server 102.

During a step 210, the gateway 120 and/or the interface 117 **drop their connection(s)** with the main server 102 . . . During a step 212, the stand-by server 104 **establishes connections** with the gateway 120 and/or the interface 117.

(*Manzardo*, Paragraph 50-53, emphasis added). Thus, *Manzardo* specifically states that the connection is first dropped and then reestablished. *Manzardo* does not disclose, teach, or suggest “maintaining a connection with the second user endpoint after the interruption,” as recited in Applicants’ Claim 1.

As another example of the distinctions between the cited art and Applicants’ claims, Applicants respectfully submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest “reestablishing the communication session between the first user endpoint and the second user endpoint if the keep alive signals resume within a predetermined time period,” as recited in Claim 1. In the Office Action, the Examiner acknowledges that *Manzardo* fails to disclose the recited features and operations; instead the Examiner relies upon *Ruberg*. (Office Action, page 3). However, *Ruberg* relates generally to “data distribution among servers in a grouped server system where device operations [of a desk top unit] remain uninterrupted when a **server** fails.” (*Ruberg*, column 2, lines 18-20, emphasis added). Specifically, *Ruberg* discloses that “[a] desktop unit coupled to a **server** maintains persistent connections with a single device manager.” (*Ruberg*, column 2, lines 28-29). According to *Ruberg*, the device manager is a component of the server machine. (*Ruberg*, column 2, lines 43-45; column 5, lines 26-27; column 5, line 64 through column 6, lines 4; figure 1). To main connection of the desktop unit to a server, *Ruberg* discloses that “[w]hen the desktop unit is

reset or when a device manager [that] the desktop unit is connected to fails, the desktop unit switches to a peer (other device managers in the group) or reconnects with the same device manager if the device manager recovers prior to establishing a new connection with a peer.” (*Ruberg*, column 2, lines 29-34, [sic.]). Thus, when a server connected to a desktop unit fails, *Ruberg* merely allows the desktop to reconnect **to that server** or to connect **to a different server**. *Ruberg* does not disclose, teach, or suggest “reestablishing the communication session between the first user endpoint and the second user endpoint if the keep alive signals resume within a predetermined time period,” as recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 1, together with Claims 2 and 4 that depend from Claim 1.

Independent Claims 6, 26, 32, and 39 include certain features and operations that are analogous to the features and operations recited in Claim 1. For example, Claim 6 recites “maintaining a connection with the second user endpoint after the interruption.” As another example, Claim 26 recites “a processor operable to . . . maintain a connection with the second user endpoint after the interruption.” As still further examples, Claim 32 recites “maintaining a connection with the second user endpoint after the interruption,” and Claim 39 recites “means for maintaining a connection with the second user endpoint after the endpoint.” Accordingly, for reasons analogous to those discussed above with regard to Claim 1, Applicants submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest the features of independent Claims 6, 26, 32, and 39.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 6, 26, 32, and 39, together with the Claims depending from Claims 6, 26, 32, and 39 including (7, 21, 23, 28-29, 31, 33, and 35-37).

**2. Claims 11-13 and 15**

Independent Claim 11, which has been rejected over the *Manzardo-Berry* combination, recites:

A method for reestablishing a communication session, comprising:  
establishing a communication session between a first user endpoint and a second user endpoint;  
receiving from a user of the first user endpoint a user-generated message to reestablish the communication session; and  
in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint.

In the previous Response to Office Action submitted on October 5, 2006, Applicants argued that the proposed *Manzardo-Berry* combination fails to disclose the steps of “receiving from a user of the first user endpoint a user-generated message to reestablish the communication session” and “in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint,” as recited in Claim 1 of the present Application. Due to a new grounds of rejection being issued with respect to other of Applicants’ claims, the most recent Office Action does not respond to Applicants’ previous remarks. However, the rejection of Claim 11 over the proposed *Manzardo-Berry* combination is identical to the previous rejection of Claim 11 over the same combination. Because Applicants believe that Applicants’ previous arguments relating to Claim 11 continue to have merit, Applicants reiterate and expand those arguments now.

Specifically, Applicants respectfully submit that the proposed *Manzardo-Berry* combination does not disclose, teach, or suggest “receiving from a user of the first user endpoint a user-generated message to reestablish the communication session” and “in response to the user-generated message, reestablishing the communication session between the second user endpoint and the user of the first user endpoint,” as recited in Claim 11. In the Office Action, the Examiner acknowledges that the recited features and operations are absent from *Manzardo* and instead relies upon *Berry*. As cited by the Examiner, *Berry* discloses that “the state machine 401 provides a set response mode message to the protocol layer 103 that causes the protocol layers 102 and 103 to begin the initialization process and re-negotiate the exchange rate and re-establish the connection.” (Column 9, lines 35-39). The Examiner also notes that

*Berry* discloses that “state machine 401 provides a synchronization request message to re-establish the connection and/or renegotiate the exchange rate.” (Column 13, lines 51-53). Thus, the relied upon portions of *Berry* merely disclose that a state machine 401 initiates various messages during the negotiation of an exchange rate and the (re)establishment of a connection. (Abstract). Because *Berry* discloses that the state machine initiates the messages, there is no disclosure in the cited portions of *Berry* of “a user-generated message,” as recited in Claim 11. Accordingly, it continues to be Applicants’ position that *Berry* does not disclose, teach, or suggest “receiving **from a user** of the first user endpoint a **user-generated** message to reestablish the communication session,” as recited in Claim 1. For analogous reasons, *Berry* also does not disclose, teach, or suggest “**in response to the user-generated message**, reestablishing the communication session between the second endpoint and the user of the first endpoint,” as also recited in Claim 1.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 11, together with Claims 12-13 and 15 that depend from Claim 11.

### 3. **Claims 16-18**

Independent Claim 16, which has been rejected over the *Manzardo-Ruberg* combination, recites:

A communication device, comprising:  
an interface operable to receive keep alive signals from a first user endpoint in a communication session with a second user endpoint; and  
a processor operable to:  
    detect an interruption in the keep alive signals;  
    maintain a connection with the first user endpoint after the interruption;  
and  
    reestablish the communication session if the keep alive signals resume within a predetermined time period.

Whether considered alone or in combination, neither *Manzardo* nor *Ruberg* disclose, either expressly or inherently, each and every element of independent Claim 16.

For example, Applicants respectfully submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest “a processor operable to . . . maintain a

connection with the first user endpoint after the interruption,” as recited in Claim 16. In the previous Office Action mailed on July 11, 2006, the Examiner acknowledged that the recited features and operations were absent from *Manzardo*.<sup>2</sup> The Examiner now takes the opposite position and relies upon *Manzardo* for the recited claim elements. For reasons analogous to those discussed above with regard to Claim 1, Applicants respectfully submit that the Examiner’s prior conclusion that *Manzardo* does not disclose, teach, or suggest “maintaining a connection with the first user endpoint after the interruption,” as recited in Claim 16, was the correct conclusion.

As stated above with regard to Claim 1, the cited portion of *Manzardo* cited merely discusses the use of keep alive signals to determine the functionality of a server. (*Manzardo*, paragraph 49). Further portions of *Manzardo* disclose that “the gateway 120 and/or the interface 117 **drop their connection(s)** with the main server 102” before “the stand-by server 104 **establishes connections** with the gateway 120 and/or the interface 117.” (*Manzardo*, Paragraph 50-53, emphasis added). Thus, *Manzardo* specifically states that the connection is first dropped and then reestablished. *Manzardo* does not disclose, teach, or suggest “maintaining a connection with the first user endpoint after the interruption,” as recited in Applicants’ Claim 1.

As another example of the distinctions between the cited art and Applicants’ claims, Applicants respectfully submit that the proposed *Manzardo-Ruberg* combination does not disclose, teach, or suggest “a processor operable to . . . reestablish the communication session if the keep alive signals resume within a predetermined time period,” as recited in Claim 16. In the Office Action, the Examiner acknowledges that *Manzardo* fails to disclose the recited features and operations; instead the Examiner relies upon *Ruberg*. (Office Action, page 3). As discussed above with regard to Claim 1, however, *Ruberg* relates generally to “data distribution among servers in a grouped server system where device operations [of a desk top unit] remain uninterrupted when a **server** fails.” (*Ruberg*, column 2, lines 18-20, emphasis added). More specifically, *Ruberg* discloses that “[w]hen the desktop unit is reset or when a device manager [that] the desktop unit is connected to fails, the desktop unit switches to a peer (other device

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<sup>2</sup> Similar to Claim 1, the Examiner relied upon *Olafsson* for disclosure of these particular claim elements. Applicant

managers in the group) or reconnects with the same device manager if the device manager recovers prior to establishing a new connection with a peer.” (*Ruberg*, column 2, lines 29-34, [sic.]). The device manager, however, is clearly disclosed by *Ruberg* as being a component of the server machine. (*Ruberg*, column 2, lines 43-45; column 5, lines 26-27; column 5, line 64 through column 6, lines 4; figure 1). Thus, when a server connected to a desktop unit fails, *Ruberg* merely allows the desktop to reconnect **to that server** or to connect **to a different server**. *Ruberg* does not disclose, teach, or suggest “a processor operable to . . . reestablish the communication session if the keep alive signals resume within a predetermined time period,” as recited in Claim 16.

For at least these reasons, Applicants respectfully request reconsideration and allowance of Claim 16, together with Claims 17-18 that depend from Claim 16.

**B. The Proposed *Manzardo-Ruberg* and *Manzardo-Berry* Combinations are Improper**

Furthermore, Applicants respectfully submit that the Examiner has not provided the requisite teaching, suggestion, or motivation, either in the cited references or in the knowledge generally available to one of ordinary skill in the art at the time of Applicant's invention to modify or combine *Manzardo* with *Ruberg* and/or *Berry* in the manner the Examiner proposes. Applicants' claims are allowable for at least this additional reason.

**1. The Legal Standard**

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. It is clear based at least on the many distinctions discussed above that the proposed *Manzardo-Ruberg* and *Manzardo-Berry* combinations do not, taken as a whole, suggest the claimed invention, taken as a whole. Applicants respectfully submit that the Examiner has



merely pieced together disjointed portions of references, with the benefit of hindsight using Applicants' claims as a blueprint, in an attempt to reconstruct Applicants' claims.

The governing Federal Circuit case law makes this strict legal standard clear.<sup>3</sup> According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* ***Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so."*** *In re Mills*, 916 F.2d at 682, 16 U.S.P.Q.2d at 1432 (emphasis added). *See also In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (***holding a prima facie case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine***); *In Re Jones*, 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, ***"The tendency to resort to 'hindsight' based upon applicant's disclosure is***

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<sup>3</sup> Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

*often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.*" M.P.E.P. § 2142 (emphasis added). The governing Federal Circuit cases are equally clear. "A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one 'to fall victim to the insidious effect of a hindsight syndrome *wherein that which only the invention taught is used against its teacher.*'" *In re Kotzab*, 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted; emphasis added). In *In re Kotzab*, the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id.* *See also, e.g., Grain Processing Corp. v. American Maize-Products*, 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak*, the Federal Circuit reversed a finding of obviousness by the Board, *explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:*

Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references*. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted; emphasis added).

## 2. The Analysis

### a. The Manzardo-Ruberg Combination is Improper

With regard to Claim 1, the Examiner states that "one skilled in the art would have recognized the reestablishing the communication session between the first endpoint and the

second endpoint if the keep alive signals resume within a predetermined time period, and would have applied *Ruberg et al.*'s desktop unit recovery in *Manzardo*'s establishing a communication session.” (Office Action, page 3). The purported motivation provided by the Examiner is that “recovery is accomplished in less than a heartbeat time period.” (Office Action, page 3). The Examiner makes similar statements with regard to Claims 16, 23, and 29. With regard to Claim 6, the Examiner states that “[o]ne skilled in the art would have recognized the user endpoint and would have applied *Ruberg et al.*'s computer 50 in *Manzardo*'s establishing a communication session.” (Office Action, page 5). The purported motivation provided by the Examiner is “to introduce user input to computer system 60 (col. 3, line 55).” (Office Action, page 5).

It appears that the Examiner has merely proposed alleged advantages of combining *Manzardo* with *Ruberg* (advantages which Applicants do not admit could even be achieved by combining these references in the manner the Examiner proposes). While the Examiner has cited a portions of *Ruberg* that touts advantages of its system, the Examiner has not pointed to any portions of the cited reference that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the communication system supporting IP network calls disclosed in *Manzardo* with the periphery device management services provided to a desktop as disclosed in *Ruberg*. In other words, the alleged advantage of the systems disclosed in *Ruberg* do not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention (***without using Applicants' claims as a guide***) to modify the cited disclosure in *Manzardo* to include the particular techniques disclosed in *Ruberg*; (2) how one of ordinary skill in the art at the time of Applicants' invention would have actually done so; and (3) how doing so would purportedly meet the limitations of Applicants' claims. Indeed, if it were sufficient for Examiners to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine or modify that reference with other references simply based on that advantage (which, as should be evident from the case law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear and as discussed above, that is not the law.

Furthermore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention ***to even attempt*** to, let alone ***to actually***, modify or combine the

communication system supporting IP network calls disclosed in *Manzardo* with the periphery device management services provided to a desktop as disclosed in *Ruberg*.<sup>4</sup> In the Office Action, the Examiner has stated that *Ruberg* is analogous art. As described above, however, *Manzardo* relates to a system providing switch over “from a main server to a stand-by server for supporting or facilitating calls having traffic routed across an IP network when the main server is disrupted or becomes unavailable.” (*Manzardo*, Abstract). By contrast, *Ruberg* relates to a system that allows a desktop unit (i.e., computer) to maintain persistent connections with a single device manager” even when the desktop unit or device manager fails. (*Ruberg*, column 2, lines 18-38). While *Manzardo* relates to a communication system, *Ruberg* relates to a very different networked computer system.

Applicants find no reason in *Manzardo* or *Ruberg* as to why one of ordinary skill in the art would be motivated to combine these seemingly unrelated references in the manner proposed by the Examiner for the reasons proposed by the Examiner. One of ordinary skill in the art at the time of Applicants’ invention would have considered the references as relating to different fields of invention and would not made the proposed combination. Applicants respectfully submit that a rejection of Applicants’ claims under the proposed *Manzardo-Ruberg* combination, in the manner provided by the Examiner, can only result from the piecing together of disjointed portions of unrelated references to reconstruct Applicants’ claims. Accordingly, Applicants respectfully submit that the Examiner’s attempt to modify or combine the proposed references appears to constitute the type of impermissible hindsight reconstruction of Applicants’ claims, using Applicants’ claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Manzardo* with *Ruberg* in the manner the Examiner proposes, Applicants respectfully submits that the Examiner’s conclusions set forth in the Office Action do not meet the requirements set forth in the M.P.E.P. and the governing Federal Circuit case

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<sup>4</sup> If “common knowledge” or “well known” art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

law for demonstrating a *prima facie* case of obviousness. Applicants respectfully submit that the rejection must therefore be withdrawn.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 1-12 and 15-39.

**b. The *Manzardo-Berry* Combination is Improper**

With regard to Claim 11, the Examiner states that “[o]ne skilled in the art would have recognized the receiving from a user of the first endpoint a message to reestablish the communication session, and in response to the message, reestablishing the communication session between the second endpoint and the user of the first endpoint, and would have applied *Berry et al*’s re-establish the connection in *Manzardo*’s establishing a communication session.” (Office Action, page 17). The purported motivation provided by the Examiner is “to re-establish the connection.” (Office Action, page 17).

Again, it appears that the Examiner has merely proposed alleged advantages of combining *Manzardo* with *Berry* (advantages which Applicants do not admit could even be achieved by combining these references in the manner the Examiner proposes). While the Examiner has cited a portions of *Berry* that tout an advantage of its system, the Examiner has not pointed to any portions of the cited reference that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to incorporate the communication system supporting IP network calls disclosed in *Manzardo* with the exchange rate re-negotiation functionality of *Berry*. In other words, the alleged advantage of the system disclosed in *Berry* do not provide an explanation as to: (1) why it would have been obvious to one of ordinary skill in the art at the time of Applicants’ invention (*without using Applicants’ claims as a guide*) to modify the cited disclosure in *Manzardo* to include the particular techniques disclosed in *Berry*; (2) how one of ordinary skill in the art at the time of Applicants’ invention would have actually done so; and (3) how doing so would purportedly meet the limitations of Applicants’ claims. Indeed, if it were sufficient for Examiners to merely point to a purported advantage of one reference and conclude that it would have been obvious to combine of modify that reference with other references simply based on that advantage (which, as should be evident from the case

law discussed above, it certainly is not), then virtually any two or more references would be combinable just based on the fact the one reference states an advantage of its system. Of course, as the Federal Circuit has made clear and as discussed above, that is not the law.

Furthermore, it certainly would not have been obvious to one of ordinary skill in the art at the time of invention *to even attempt* to, let alone *to actually*, modify or combine the communication system supporting IP network calls disclosed in *Manzardo* with the exchange rate re-negotiation functionality of *Berry*.<sup>5</sup> In the Office Action, the Examiner has stated that *Berry* is analogous art. As described above, however, *Manzardo* relates to a system providing switch over “from a main server to a stand-by server for supporting or facilitating calls having traffic routed across an IP network when the main server is disrupted or becomes unavailable.” (*Manzardo*, Abstract). By contrast, *Berry* relates to an application program for “request[ing] renegotiation of an exchange rate at any time.” (*Berry*, Abstract). Aside from relating very generally to communication services, Applicants find no reason in *Manzardo* or *Berry* as to why one of ordinary skill in the art would be motivated to combine these seemingly unrelated references in the manner proposed by the Examiner for the reasons proposed by the Examiner. One of ordinary skill in the art at the time of Applicants’ invention would have considered the references as relating to different fields of invention and would not made the proposed combination. Applicants respectfully submit that a rejection of Applicants’ claims under the proposed *Manzardo-Berry* combinations, in the manner provided by the Examiner, can only result from the piecing together of disjointed portions of unrelated references to reconstruct Applicants’ claims. Accordingly, Applicants respectfully submit that the Examiner’s attempt to modify or combine the proposed references appears to constitute the type of impermissible hindsight reconstruction of Applicants’ claims, using Applicants’ claims as a blueprint, that is specifically prohibited by the M.P.E.P. and governing Federal Circuit cases.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Manzardo* with *Berry* in the manner the Examiner proposes, Applicants respectfully submits that the Examiner’s conclusions set forth in the Office Action do not meet

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<sup>5</sup> If “common knowledge” or “well known” art is relied upon by the Examiner to combine or modify the references, Applicant respectfully requests that the Examiner provide a reference pursuant to M.P.E.P. § 2144.03 to support such an argument. If the Examiner relies on personal knowledge to supply the required motivation or suggestion to combine or modify the references, Applicant respectfully requests that the Examiner provide an affidavit supporting such facts pursuant to M.P.E.P. § 2144.03.

the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Applicants respectfully submit that the rejection must therefore be withdrawn.

For at least these reasons, Applicants respectfully request reconsideration and allowance of independent Claims 1-13 and 15-39.

**CONCLUSION**

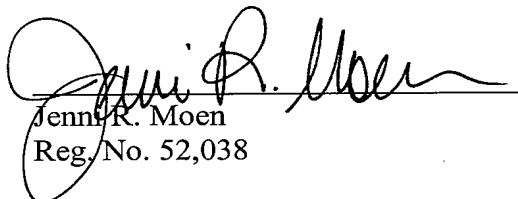
Applicants have made an earnest attempt to place this application in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this application in any manner, the Examiner is invited to contact Jenni R. Moen, Attorneys for Applicants, at the Examiner's convenience at (214) 953-6809.

Applicants believe that no fees are due, however, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts, L.L.P.

Respectfully submitted,

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Reg. No. 52,038

Date: March 9, 2007

Correspondence Address:

at Customer No. **05073**